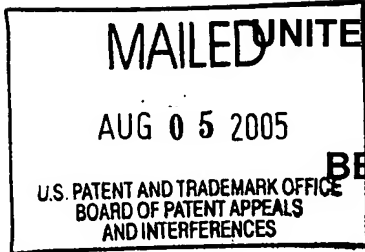The opinion in support of the decision being entered today was <u>not</u> written
for publication and is <u>not</u> binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

<u>Ex parte</u> MICHAEL WAYNE BROWN, ANDREW DOUGLAS HATELY,
KELVIN RODERICK LAWRENCE and MICHAEL A. PAOLINI

Appeal No. 2005-1837
Application No. 10/059,088

ON BRIEF

Before HAIRSTON, RUGGIERO, and DIXON, <u>Administrative Patent Judges</u>.

HAIRSTON, <u>Administrative Patent Judge</u>.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1 through 6, 8 through 10, 12

through 17, 19 through 21, 23 through 28 and 30 through 32. Claims 7, 11, 18, 22, 29 and

33 are objected to as being dependent upon rejected base claims, but would be allowable

if rewritten in independent form including all of the limitations of the base claims and any

intervening claims.

The disclosed invention relates to a method and system for changing alpha levels

of a displayable object.

Claim 1 is illustrative of the claimed invention, and it reads as follows:

1. A method for changing alpha levels of a displayable object, said method
comprising the steps of:

determining an alpha level to represent a status of a non-interactive computing
task; and

graphically adjusting a transparency of at least a selected portion of a displayable
object associated with said non-interactive computing task according to said alpha level,
such that said status of said non-interactive computing task is displayed by said
associated displayable object.

The reference relied on by the examiner is:

Frank et al. (Frank)   5,651,107   July 22, 1997

Claims 1 through 6, 8 through 10, 12 through 17, 19 through 21, 23 through 28 and

30 through 32 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Frank.

Reference is made to the final rejection, the brief and the answer for the respective

positions of the appellants and the examiner.

OPINION

We have carefully considered the entire record before us, and we will sustain the

anticipation rejection of claims 1 through 3, 5, 6, 8 through 10, 12 through 14, 16, 17, 19

through 21, 23 through 25, 27, 28 and 30 through 32, and reverse the anticipation

rejection of claims 4, 15 and 26.

Appellants argue (brief, page 4) that claim 1 is not anticipated because Frank does

not teach "the step of 'determining an alpha level to represent a status of a non-interactive

computing task.'" According to the appellants (brief, page 7), a user interface is required in

Frank for a user to select an alpha value. Although an interactive user interface (i.e., a

cursor 265 that moves slide bars 264 and 272) is used by Frank to set the alpha values for

the two different applications in windows 260 and 255 (Figure 8), the end result of such a

setting is also a determination of an alpha level that represents a status of a "non-

interactive computing task," namely, the two noted applications executed concurrently by

the processor (column 2, lines 38 through 55). Stated differently, Frank discloses the

same non-interactive computing task (i.e., executing applications by the processor of a

CPU) that is performed by the processor in the disclosure (specification, page 6).

Appellants' argument (brief, page 7) that the disclosed invention performs the step

of computing an alpha level via a computer is without merit in view of the fact that the

disclosed and claimed invention never expressly states that the step of computing an

alpha level is performed by the computer (i.e., non-interactively) as opposed to

interactively by the user of the computer. In any event, claim 1 on appeal is not directed to

a computer setting of the alpha level.

In summary, the anticipation rejection of claim 1 is sustained. The anticipation

rejection of claims 12 and 23 is likewise sustained because appellants have chosen to let

these claims stand or fall with claim 1 (brief, page 3).

The anticipation rejection of claims 2, 5, 6, 8 through 10, 13, 17, 19 through 21, 24, 27, 28 and 30 through 32 is sustained because appellants have not presented any patentability arguments for these claims.

The anticipation rejection of claims 3, 14, and 25 is sustained because we agree with the examiner's position (answer, pages 5, 6 and 10) that the CPU (processor) is at least one among the list of claimed elements.

The anticipation rejection of claims 4, 15 and 26 is reversed because we agree with the appellants' argument (brief, page 10) that the mere mention of color variation of display pixels is not the same as the claimed steps of determining a color level to represent the non-interactive computing task, and graphically adjusting the color with the transparency according to the color level.

DECISION

The decision of the examiner rejecting claims 1 through 6, 8 through 10, 12 through 17, 19 through 21, 23 through 28 and 30 through 32 under 35 U.S.C. § 102(b) is affirmed as to claims 1 through 3, 5, 6, 8 through 10, 12 through 14, 16, 17, 19 through 21, 23 through 25, 27, 28 and 30 through 32, and is reversed as to claims 4, 15 and 26.

No time period for taking any subsequent action in connection with this appeal

may be extended under 37 CFR § 1.136(a).

<u>AFFIRMED-IN-PART</u>

KENNETH W. HAIRSTON   )
Administrative Patent Judge   )
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) BOARD OF PATENT
JOSEPH F. RUGGIERO   )   APPEALS
Administrative Patent Judge   )   AND
) INTERFERENCES
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)
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JOSEPH L. DIXON   )
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